DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0591 ITC
ADJUSTED GROSS INCOME TAX
For Years 1991, 1992 AND 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax – Foreign Dividend Deduction

Authority: IC 6-3-2-12

The taxpayer protested the auditor's adjustments adding back taxpayer's Federal foreign dividend expense deductions to taxpayer's foreign dividend income deduction when calculating Adjusted Gross Income.

II. Tax Administration – Waiver of Penalty.

Taxpayer seeks waiver of the penalties because the tax liabilities were due to reasonable cause and not due to willful neglect.

STATEMENT OF FACTS

Taxpayer calculated taxable income in a different way for each of three audit years. For the years 1991 and 1993, the taxpayer calculated the Adjusted Gross Income as being reduced by the foreign source dividend on the federal return without reducing the foreign source dividend by the expenses taken as deductions to it on the federal return. The 1992 return was calculated with the Adjusted Gross Income being reduced by both the foreign source dividend and expenses. Taxpayer protests additional assessments based on Audit's addback of expenses associated with these foreign source dividends.

I. Adjusted Gross Income Tax – Foreign Dividend Deduction

DISCUSSION

In calculating its Indiana tax liabilities, taxpayer, pursuant to IC 6-3-2-12, deducted foreign source dividend income from its Indiana adjusted gross income. Audit, however, disagreed with taxpayer's calculus. Re-calculation by Audit resulted in an increase in taxpayer's Indiana adjusted gross income and tax. Proposed assessments of Indiana adjusted gross income tax followed.

Taxpayer, in response, directs the Department's attention to the language of IC 6-3-2-12(b), which states:

A corporation that includes any foreign source dividend in its adjusted gross income for a taxable year is entitled to a deduction from that adjusted gross income. The amount of the deduction equals the product of:

the amount of the foreign source dividend included in the corporation's adjusted gross income for the taxable year; multiplied by the percentage prescribed in subsection (c), (d), or (e), as the case may be.

The aforementioned subsections (c), (d), and (e) allow corporate taxpayers to receive a one hundred percent (100%) deduction for foreign source dividends received from corporations in which a taxpayer has an eighty percent (80%) or larger ownership interest; an eighty-five percent (85%) deduction for dividends received from corporations in which a taxpayer has a fifty to seventy-nine percent (50%-79%) percent ownership interest; and a fifty percent (50%) deduction for dividends received from corporations in which a taxpayer has less than a fifty percent (50%) ownership interest. IC 6-3-2-12(c)-(e).

This statutory language is cogent and clear. IC § 6-3-2-12 authorizes pro rata deductions (based on the percentage ownership of the payor by the payee) of certain foreign source dividend income. In this instance, taxpayer has followed the statutory prescriptions in calculating its foreign source dividend deductions.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration – Waiver of Penalty.

DISCUSSION

The prior finding renders this issue moot.

FINDINGS

The taxpayer's appeal is sustained.

JM/PE/MR 012302